

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

REGINALD GIBSON,

Plaintiff,

v.

E. CASTELLANOS, et al.,

Defendants.

No. 1:21-cv-00794 KES GSA (PC)

ORDER DENYING PLAINTIFF’S MOTION  
FOR THE APPOINTMENT OF COUNSEL

(ECF No. 66)

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this Court is Plaintiff’s request for the appointment of counsel. ECF No. 66. This is Plaintiff’s third request. See ECF Nos. 39, 41. His previous two requests have been denied. See ECF Nos. 40, 44. For the reasons stated below, this motion will be denied as well.

I. PLAINTIFF’S MOTION FOR THE APPOINTMENT OF COUNSEL

In support of Plaintiff’s request for the appointment of counsel, Plaintiff states in part that he is unable to afford counsel and that he is proceeding in forma pauperis. ECF No. 66 at 1. Plaintiff also argues that he is a person with a “mental develop disability” and the issues in this case are complex and will require significant research and investigation . Id. To support his

1 claim of developmental disability, Plaintiff provides documentation.<sup>1</sup> See ECF No. 66 at 4. He  
2 states that he is a participant in the mental health services delivery system and is also assigned to  
3 the developmental disability program. Because of his disability problems Plaintiff states he will  
4 require third party assistance.

## 5 II. APPLICABLE LAW

6 District courts lack authority to require counsel to represent indigent prisoners in section  
7 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional  
8 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28  
9 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.  
10 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional  
11 circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as  
12 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the  
13 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not  
14 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional  
15 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of  
16 legal education and limited law library access, do not establish exceptional circumstances that  
17 warrant a request for voluntary assistance of counsel.

## 18 III. DISCUSSION

19 Plaintiff’s request will be denied for a couple of reasons. First, the fact that this case is  
20 now at the exhaustion-based motion for summary judgment phase of the proceedings indicates  
21 that Plaintiff has raised some viable claims upon which he may be able to receive relief on their  
22 merits. In addition, the fact that this case has been on the Court’s docket since 2021, and Plaintiff  
23 has been able to manage it without legal help since then, is support for the Court’s finding that  
24 Plaintiff has a satisfactory ability to prosecute this case and articulate his claims on his own,  
25 despite the alleged existence of complex legal issues.

26 For these reasons, having considered the factors under Palmer, the Court finds that

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27 <sup>1</sup> The document that Plaintiff has provided in support of his claim that he has a mental  
28 developmental disability is unreadable. See ECF No. 66 at 4.

1 Plaintiff has failed to meet his burden of demonstrating exceptional circumstances warranting the  
2 appointment of counsel at this time. Therefore, his motion for the appointment of counsel will be  
3 denied.

4 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the appointment of  
5 counsel (ECF No. 66) is DENIED without prejudice.

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7  
8 IT IS SO ORDERED.

9 Dated: August 8, 2025

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE